

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CHARLES MELANDO,	)	8:09CV139
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
CHADRON COMMUNITY	)	
HOSPITAL, and C. A. SUTERA,	)	
MD,	)	
	)	
Defendants.	)	

Plaintiff filed his Complaint in this matter on April 20, 2009. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [6](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#).

**I. SUMMARY OF COMPLAINT**

Plaintiff's Complaint names two Defendants, the Chadron Community Hospital and C.A. Sutera, M.D. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff is currently confined in the Nebraska State Penitentiary. ([Id.](#))

Condensed and summarized, Plaintiff alleges that he was convicted of possession of a controlled substance because Defendants fabricated information that caused his arrest. ([Id.](#) at CM/ECF pp. 5-6.) Specifically, Plaintiff alleges that he possessed a prescription for certain medications but Defendants provided the Chadron Police with information indicating that he did not. ([Id.](#) at CM/ECF p. 6.) Because of this "fabrication," Plaintiff was arrested. ([Id.](#)) Plaintiff seeks monetary damages in the amount of \$1,000,000.00. ([Id.](#) at CM/ECF p. 7.) In addition, Plaintiff asks the

court to “deem defendants culpable and liable . . . .” (*Id.*)

## **II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW**

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. *See* [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

Therefore, where a pro se plaintiff does not set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible, their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 127 S. Ct. 1955, 1974 (2007) (overruling [Conley v. Gibson](#), 355 U.S. 41 (1967)), and setting a new standard for failure to state a claim upon which relief may be granted). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See* [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), 294 F.3d 1043, 1043-1044 (8th Cir. 2002) (citations omitted).

## **III. DISCUSSION OF CLAIMS**

Claims relating to the validity of an individual’s incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in [Preiser v. Rodriguez](#), 411 U.S. 475 (1973) and [Heck v. Humphrey](#), 512 U.S. 477 (1994), if success on the merits of a civil rights claim would necessarily

implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. See [Heck, 512 U.S. at 486-87](#).

Here, Plaintiff claims that Defendants fabricated evidence that caused his arrest and conviction. (Filing No. [1](#) at CM/ECF pp. 5-6.) These claims necessarily implicate the validity of Plaintiff's conviction and incarceration. As set forth above, the court cannot address these claims in an action brought pursuant to [42 U.S.C. § 1983](#). However, the court will dismiss Plaintiff's claims without prejudice to reassertion in a habeas corpus or similar proceeding.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (filing no. [1](#)) is dismissed without prejudice to reassertion in accordance with this Memorandum and Order.

2. A separate judgment will be entered in accordance with this Memorandum and Order.

May 21, 2009.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge